

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAYDEANE FRANCIS ELL,

Plaintiff,

v.

JASON BENNETT,

Defendant.

CASE NO. 2:24-cv-01358-JNW

ORDER ADOPTING R&R, DENYING
APPLICATION TO PROCEED IN
FORMA PAUPERIS, AND
DISMISSING CASE

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Theresa L. Fricke, U.S. Magistrate Judge, regarding pro se Petitioner Jaydeane Francis Ell’s application to proceed in forma pauperis (IFP) and proposed habeas petition. Dkt. No. 6.

On October 7, 2024, after reviewing Ell’s proposed habeas petition, Judge Fricke found that “[u]nless one or more of the circumstances described in 28 U.S.C. § 2244(d)(1)(B)-(D) applies,” the petition was time barred. Dkt. No. 5 at 4; *see* 28 U.S.C. § 2244(d)(1) (“A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court.”); *see also* 28 U.S.C. § 2244(d)(1)(B)-(D) (describing circumstances that allow

1 the statute of limitations period to run from a date later than “the date on which the
2 judgment became final”). Judge Fricke ordered Ell to show cause as to why his
3 proposed habeas petition should not be dismissed on this ground. Dkt. No. 5.

4 Ell failed to reply. *See* Dkt. Based on this failure, on November 15, 2024,
5 Judge Fricke recommended dismissal of Ell’s case for failure to prosecute and
6 failure to comply with a Court Order. Dkt. No. 6. Then, on January 16, 2025, Ell
7 filed a proposed motion for relief from judgment, objecting to the Court’s adoption of
8 the R&R, as well as to the Magistrate Judge’s entry of judgment. Dkt. No. 7.

9 On February 3, 2025, the Court issued an Order to Show Cause, explaining
10 that Ell’s proposed motion was mistaken: “[T]he Court ha[d] not adopted the R&R,
11 and Judge Fricke did not issue judgment.” Dkt. No. 8 at 5. Nevertheless, the Court
12 found that “Ell’s filing—its apparent confusedness notwithstanding—indicates that
13 he has not abandoned prosecution of this action.” *Id.* Therefore, the Court was “not
14 inclined” at that time “to dismiss for failure to prosecute.” *Id.* But still, the Court
15 agreed with Judge Fricke’s conclusion that Ell “provides no argument as to why his
16 petition should not be dismissed as time barred.” *Id.* The Court therefore instructed
17 Ell to show cause in writing, within 30 days, as to why “one of the circumstances
18 described in 28 U.S.C. § 2244(d)(1)(B)-(D)” —or equitable tolling—should save his
19 claim from the applicable time bar. *Id.*

20 The deadline for Ell’s response has passed, and he has not replied. *See* Dkt.
21 Therefore, the Court APPROVES and ADOPTS IN FULL the R&R, Dkt. No. 6;
22 DISMISSES WITHOUT PREJUDICE this case for failure to prosecute and failure
23 to comply with court orders; DENIES Ell’s Application to Proceed In Forma

1 Pauperis, Dkt. No. 1; and DIRECTS the Clerk of Court to ENTER JUDGMENT and
2 CLOSE THIS CASE.

3 It is so ORDERED.

4 Dated this 7th day of March, 2025.

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6 Jamal N. Whitehead
7 United States District Judge
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